

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Bernard A. Fish #948620, Sr.,

Petitioner,

v.

Case No. 2:18-cv-00002
HON. GORDON J. QUIST

THOMAS WINN,

Respondent.

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REPORT AND RECOMMENDATION

Petitioner, Bernard Fish, filed a “motion for dismissal of case.” (ECF No. 14). Petitioner requested that the Court dismiss the petition because Respondent filed a late response. Petitioner recently filed a motion for extension time to reply to the response. It appears that Petitioner does not want the petition dismissed. Petitioner is warned that if the Court were to grant his motion to dismiss, his petition for writ of habeas corpus would be dismissed, it would not be heard by this court, and his right to challenge his criminal conviction could forever be lost. It does not appear that Petitioner wants the Court to dismiss his petition.

Petitioner may have intended to request that the Court grant the petition in his favor, due to his belief that Respondent filed the response one day late. Petitioner asserts that the response was due October 14, 2018, but not filed until October 15, 2018. October 14, 2018, fell on a Sunday. Fed. R. Civ. P. 6(a)(1)(c) provides that if the last day of the period is a Sunday, the period continues to run until the end of the next day. Accordingly, the response was timely filed on October 15, 2018. In addition, even if the response was filed late, Petitioner asserts no prejudice.

It is therefore recommended that court deny Petitioner's motion to dismiss.
(ECF No. 14).

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within fourteen (14) days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley
TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: February 4, 2019